

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 65 of 1997 (O&M)

Date of decision : February 03, 2016

Smt. Babli and another,

..... Appellants.

v.

Dalip Singh etc.

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Rajiv Sharma, Advocate
for the appellants.

Mr. Arun Yadav, Advocate
for respondent No.1.

Mr. SS Behl, Advocate
for respondent No.2.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This appeal has been filed by the claimants against the Award of the Tribunal. Brief facts are that the husband of appellant No.1 was a driver in the truck bearing registration No.HRU-454. On the fateful day, the truck met with an accident with the bus of respondent No.2 and his heirs filed the instant petition for compensation. The Tribunal held that there was contributory negligence and consequently deducted the compensation by 50%.

Counsel for the appellants has argued that this finding is

vitiated. As per him, Karan Singh (PW-3) had unequivocally stated that the accident was caused due to rash and negligent driving by the driver of the bus because he was not careful while overtaking another running truck and collided head-on with the truck being driven by the deceased. He has further argued that the driver of the bus (RW1) in his testimony though tried to give a different colour yet even if his testimony is considered, it would show that there was no contributory negligence. RW1 stated that he was overtaking a stationary truck and when he had almost overtaken it, the truck being driven by the deceased collided with him. As per him, it is always the duty of the driver while overtaking a vehicle to ensure that there is no on-coming vehicle because for the purpose of overtaking inevitably the overtaking vehicle has to come on to the wrong lane, especially on a single road. As per him, apart from this, the reason given by the Tribunal for dis-regarding the testimony of PW3 also does not wash. Additionally, the fact that the truck owner did not appear to give testimony cannot give rise to any inference against the claimants.

Counsel for respondent No.2 has tried to justify the finding on contributory negligence but for that he is relying only on the substantive evidence of the driver of the offending bus.

In my opinion, as has rightly been argued by counsel for the appellants, even the testimony of the bus driver indicates that he was not blameless. The fact that Dariyav Singh, owner of the truck, did not appear cannot be held to be against the appellants and the mere fact that Karan Singh (PW3) saw the accident from 200-300 yards cannot invariably be taken to indicate that he did not have a clear view of the accident. In these

circumstances, finding of contributory negligence is set aside.

Counsel for the appellants has further argued that even as regards compensation, the Tribunal has erred. He states that nothing has been awarded on account of loss of consortium, love and affection and funeral expenses. He has placed reliance on the decisions of the Hon'ble Supreme Court in Rajesh and others vs Rajbir Singh and others, 2013(9) SCC 54, and Vimal Kanwar and others vs Kishore Dan and others, (2013-3) PLR 776. He has further stated that the Tribunal has also erred in not awarding any thing towards future prospects.

Keeping in view the facts and circumstances of the case, I award ₹ 50,000/- towards loss of consortium and ₹ 50,000/- towards loss of love and affection to appellant No.1, and ₹ 50,000/- each to appellants No.2 and 4 towards loss of love and affection. I also award ₹ 10,000/- towards funeral expenses. Rate of interest in the present case would be @ 8% pa on the enhanced amounts. As regards future prospects, since the matter is pending before the Hon'ble Supreme Court, nothing can be awarded at this stage. It is further clarified that appellant No.3 would not be entitled to any compensation being the father, and apart from the amounts awarded in favour of the other claimants individually, the amount shall be divided equally among the widow, the son and the mother.

This appeal stands disposed of in the above terms.

(AJAY TEWARI)
JUDGE

February 03, 2016
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